

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

APPLIANCE COMPUTING III, INC.
d/b/a SUREFIELD,

Plaintiff,

v.

REDFIN CORPORATION,

Defendant.

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CIVIL ACTION NO. 6:20-cv-00376-ADA

OMNIBUS ORDER ON PRETRIAL RULINGS¹

PLAINTIFF'S MOTIONS <i>IN LIMINE</i> (Dkt. 160)	RULING²
Plaintiff's MIL 1	Mooted by agreement. Redfin will not make any statement or argument to the jury that "Surefield should have sued Matterport" or otherwise argue that Matterport is the proper defendant. Notwithstanding the above agreement, Redfin may present evidence that it is Matterport's technology that is being accused and that Redfin does not provide the technology or perform the steps being accused of infringement.
Plaintiff's MIL 2	Unopposed, GRANTED
Plaintiff's MIL 3	GRANTED
Plaintiff's MIL 4	GRANTED
Plaintiff's MIL 5	GRANTED
Plaintiff's MIL 6	Unopposed, GRANTED

¹ All rulings herein are subject to the conditions and limitations expressed by the Court at the March 29, 2022 Pretrial Conference.

² Unless the Court specifically excluded/precluded the proposed testimony, evidence, and/or argument at the Pretrial Conference, the Court's rulings of GRANTED precludes offering the subject testimony, evidence, or argument without first approaching the bench.

Plaintiff's MIL 7	<p>Mooted by agreement.</p> <p>Redfin will not make any arguments contrary to the Court's claim construction and, for terms given their plain and ordinary meaning, will not argue that such term has a special technical meaning or argue disclaimer based on the specification or prosecution history. This does not preclude the parties from providing evidence of plain and ordinary meaning based on disclosure in the prosecution history or specification.</p>
Plaintiff's MIL 8	DENIED
Plaintiff's MIL 9	GRANTED
Plaintiff's MIL 10	GRANTED
Plaintiff's MIL 11	GRANTED
Plaintiff's MIL 12	GRANTED
Plaintiff's MIL 13	GRANTED
Plaintiff's MIL 14	GRANTED
Plaintiff's MIL 15	GRANTED
Plaintiff's MIL 16	GRANTED
Plaintiff's MIL 17	GRANTED
Plaintiff's MIL 18	DENIED
Plaintiff's MIL 19	DENIED
Plaintiff's MIL 20	DENIED
Plaintiff's MIL 21	Unopposed, GRANTED
Plaintiff's MIL 22	GRANTED
Plaintiff's MIL 23	GRANTED
Plaintiff's MIL 24	Withdrawn, with reservation of the right to object at trial


Plaintiff's MIL 25	Mooted by agreement. Redfin agrees not to use any pejorative terms but reserves the right to state neutral facts about whether Surefield practices the invention (to which Surefield reserves the right to object).
Plaintiff's MIL 26	Withdrawn, with reservation of the right to object at trial
Plaintiff's MIL 27	Mooted by agreement. Redfin agrees that its expert will not testify about any hearsay beyond what is disclosed in the expert's report.
Plaintiff's MIL 28	Withdrawn, with reservation of the right to object at trial
DEFENDANT'S MOTIONS <i>IN LIMINE</i> (Dkt. 159)	RULING³
Defendant's MIL 1	GRANTED
Defendant's MIL 2	Mooted by agreement. Surefield agrees not to make unnecessary insinuation regarding relative size of the parties beyond what is necessary to provide context for the hypothetical negotiation or to explain the "success" disparity (for example, no reference to "David and Goliath" or to Redfin's ability to pay for lawyers, witnesses fees, or trial accommodations).
Defendant's MIL 3	DENIED
Defendant's MIL 4	GRANTED in part and DENIED in part
Defendant's MIL 5	DENIED (in conjunction with ruling on Dkt. 85)

³ Unless the Court specifically excluded/precluded the proposed testimony, evidence, and/or argument at the Pretrial Conference, the Court's rulings of GRANTED precludes offering the subject testimony, evidence, or argument without first approaching the bench.

Defendant's MIL 6	DENIED

MISC. OPPOSED MOTIONS	RULING
Dkt. 82: Plaintiff's Opposed Motion to Strike and Exclude Defendant's Expert Opinions Regarding Certain Non-Infringing Alternatives	DENIED
Dkt. 85: Defendant Redfin Corporation's Motion to Exclude Certain Testimony of Dr. Jose Luis Melendez	DENIED
Dkt. 86: Defendant Redfin Corporation's Motion to Strike Portions of the Expert Report of Dr. Jose Luis Melendez on Infringement	DENIED
Dkt. 87: Defendant Redfin Corporation's Motion for Summary Judgment on Non-Infringement	DENIED
Dkt. 88: Plaintiff's Opposed Motion to Strike and Exclude Opinions in the Reports of Defendant's Expert Dr. Navratil	DENIED
Dkt. 89: Plaintiff's Motion for Partial Summary Judgment on Defendant's Invalidity Defenses and Counterclaims	DENIED
Dkt. 99: Defendant Redfin Corporation's Motion to Exclude Mr. Benoit's Opinions and Testimony Under Fed. R. Evid. 702 and <i>Daubert</i>	DENIED
Dkt. 100: Plaintiff's Opposed Motion to Strike and Exclude Opinions of Defendant's Damages Expert, James Malackowski	GRANTED in part and DENIED in part The Motion is GRANTED as to Mr. Malackowski's testimony and opinions regarding (1) Zillow's 2020 offer to Surefield and (2) Matterport's patent portfolio, which are excluded; all other grounds raised in the Motion are DENIED.
Dkt. 141: Plaintiff's Opposed Motion for Leave to File Motion for Summary Judgment Based on Recent PTAB Decisions Dkt. 150: Defendant Redfin Corporation's Opposed Motion to Strike Untimely Report of Dr. Jose L. Melendez	DENIED as moot in conjunction with ruling on Redfin's Motion in Limine #1 (Dkt. 159)

SO ORDERED this 2nd day of May, 2022.


THE HONORABLE ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE